Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Ameritech Corporation, Transferor, to SBC Communications Inc., Transferee

CC Docket No. 98-141

To: Chief, Common Carrier Bureau

REPLY COMMENTS OF SBC COMMUNICATIONS INC. IN SUPPORT OF A DETERMINATION THAT SBC INCUMBENT LECS MAY OWN COMBINATION PLUGS/CARDS AND OPTICAL CONCENTRATION DEVICES

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On February 15, 2000, SBC asked the Common Carrier Bureau to consider a relatively simple question regarding ownership of two specific types of equipment under the Merger Conditions. SBC's answer – that the equipment may be owned by the SBC incumbent LECs and need not be owned by their Advanced Services affiliates – is consistent with the text of the Merger Conditions and has received nearly unanimous support from commenters. That should be the end of the inquiry.

Going far beyond the scope of SBC's request, however, data CLECs seek to use this proceeding to work a fundamental change in telecommunications law and policy. Simply stated, the data CLECs ask the Commission to hold that the design and deployment of SBC's network and services will be dictated, not by SBC, but by its competitors. That principle is anathema to the Communications Act and to basic principles of antitrust and fair competition. Consumers

and efficient competitors benefit from fair competition, not coordination between competitors on what products will be brought to the market and when.

Fair competition is exactly what SBC's reading of the Merger Conditions promotes. SBC's incumbent LECs will own so-called "combination plugs/cards" that include the capability of splitting voice and data signals, as well as optical concentration devices ("OCDs") that aggregate data traffic in the central office and route it to the appropriate carrier. Ownership of this equipment will allow the SBC incumbent LECs to build a network that supports new and higher-quality services for approximately 20 million local customers – particularly residential and small business consumers who do not fit into many CLECs' business plans. This equipment also will be made available for CLECs' use, giving them a means of providing higher-quality Advanced Services to a broader customer base, without affecting any of their existing service options.

A contrary reading of the Merger Conditions would put these concrete benefits of SBC's Project Pronto at risk. Even more fundamentally, adopting the CLECs' proposals for "collaborative" design of SBC's network would threaten investment throughout the telecommunications industry. No company would, or should, make major investments if its competitors have a right to veto the results. The CLECs' proposals also are procedurally improper, as the Merger Conditions provide no support for applying a new rule of this sort specifically to SBC. The Commission should recognize the CLECs' objections to Project Pronto as what they are: an attempt to delay and handicap SBC's deployment of Advanced Services, while the CLECs roll-out their own, competing services.

BACKGROUND

SBC began its deployment of DSL services in 1998, by locating DSLAMs in central offices in California. During 1998 and early 1999 (well before adoption of the Merger Conditions), SBC developed the concept of increasing its loop infrastructure to provide integrated voice and data capabilities to additional local customers. Project Pronto responds to the key technical limitation of most DSL services – their inability to be provided over long distances. Since customers cannot be moved, SBC will in essence move its network closer to the customers, by upgrading or constructing approximately 20,000 remote terminals in thirteen states. These remote terminals will be connected to the SBC central offices using fiber-optic feeder facilities, and to customer premises using copper facilities. Within the remote terminal will be the equipment necessary to make the transition from copper to fiber facilities, for traditional POTS and Advanced Services.[1]

SBC has made available detailed deployment information for Project Pronto. That information is posted on the Internet and will be routinely updated.[2] The end result of Project Pronto, if it proceeds as planned, will be to put 80 percent of SBC's customers within 12,000 feet of a central office or remote terminal, making them eligible for ADSL services and other xDSL services that may be developed in the future. Project Pronto will enable SBC to offer high-speed service to more than 20 million additional retail customers who cannot be served today.

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[1] SBC uses multiple vendors for its remote terminal equipment. Through a Request for Proposals, SBC selected Alcatel and Advanced Fiber Communications as the initial vendors for its digital loop carrier ("DLC") and ADSL equipment in remote terminals. Alcatel will provide newly developed Litespan equipment; every other major incumbent LEC uses Alcatel Litespan equipment to provide integrated voice and data capabilities, and a number of CLECs use this equipment as well. *See* Alcatel Comments at 1.

[2] *See* <http://www.sbc.com/PublicAffairs/PublicPolicy/Home.html>.

CLECs also will benefit. They will gain an unprecedented opportunity for access to a new Digital Loop Electronics-Digital Subscriber Line ("DLE-DSL") offering, as described in the *February 15 Letter* and further described below. CLECs will be able to choose among the full range of service options available from the new ADSL equipment, regardless of the options selected by SBC's Advanced Services affiliates. CLECs thus will benefit from the same technical advances as SBC. Loop improvements will reduce the amount of conditioning CLECs must pay for to obtain the quality they desire. And these loops will be capable of supporting higher speeds than the existing copper loops, giving CLECs a greater ability to compete with cable modems, for example. There will be no loss of service options for CLECs. Unbundling of all mandated UNEs still will occur, and collocation will remain available (space permitting) in central offices as well as remote terminals under FCC and state rules.

In short, Project Pronto – including the offering of DLE-DSL to CLECs – directly advances this Commission's goal of "prodding all carriers, including [SBC], to hasten deployment" of Advanced Services. *Merger Order* ¶ 363. It is the paradigm of what the Merger Conditions were drafted to encourage.

DISCUSSION

The specific issue before the Bureau is a narrow and relatively simple one, involving ownership of two types of equipment and interpretation the Merger Conditions. SBC's position fits the language of the Merger Conditions and has substantial support from commenters. That should be the end of the inquiry. CLECs' efforts to cloud the issue with far-ranging arguments about SBC's business plan should be rejected on that basis. But even if they are considered in the context of SBC's alternative requests for an extension or waiver of the conditions, these arguments should be rejected. Ownership of the plugs/cards and OCDs by SBC incumbent

LECs is supported by strong practical and technical considerations, and SBC has proposed a reasonable approach to CLEC access that fully protects the legitimate interests of competing Advanced Services providers.

I. THE COMMENTS CONFIRM SBC'S CONSTRUCTION OF THE MERGER CONDITIONS

If the plugs/cards and OCDs are not "Advanced Services Equipment" as defined in Paragraph 3d of the Merger Conditions, then the equipment may be owned by the SBC incumbent LECs. Likewise, the Bureau could determine that resolving ambiguity in favor of SBC's reading is most "consistent with the underlying intent of the conditions" as a whole. *See Merger Order* ¶ 508. The Commission also may modify the Conditions,[3] or the Bureau could grant an indefinite extension of Paragraphs 3d and 4a with respect to this equipment, to fulfill the Conditions' intent and confirm SBC's approach. *See Merger Conditions* ¶ 72.

Commenters are in widespread agreement that Paragraph 3d does not dictate treating the plugs/cards or the OCD as Advanced Services Equipment that must be owned by the separate Advanced Services affiliate. Or they simply ignore the issue.

- **Alcatel** "agrees with SBC's recommendation that its incumbent LEC own the Plug/Cards and OCDs." Alcatel Comments at 4.

- **ALTS** agrees that "line cards may be used for both voice and Advanced Services and therefore fall within the 'mixed use' category of network equipment that the SBC parent need not transfer to its [Advanced Services] affiliates." ALTS Comments at 10.

[3] The Commission has previously granted a merging party's request for clarification and modification of conditions in order to further the underlying goals of the Communications Act and the purposes of the conditions. *See, e.g.,* Memorandum Opinion and Order, *Application of GTE Corp. and Southern Pacific Co. for Consent to Transfer Control of Southern Pacific Communications Co. and Southern Pacific Satellite Co.*, File No. ENF-83-1, FCC 84-254, 1984 FCC LEXIS 2539 (rel. June 4, 1984).

- **Bell Atlantic** and **GTE**, which have agreed to abide by the general terms of Paragraph 3d and by other provisions of the Merger Conditions, and thus have a concrete stake in the interpretation of these provisions, agree with SBC's interpretation of paragraph 3. Bell Atlantic/GTE Comments; *see also* Memorandum Opinion and Order, *Application by Bell Atlantic-New York for Authorization Under Section 271 of the Communications Act to Provide In-Region InterLATA Services in the State of New York*, CC Docket No. 99-295, FCC 99-404, at ¶ 331 & n.1036 (rel. Dec. 22, 1999) ("*New York Order*").

- **DATA** "does not object to" SBC incumbent LECs owning the OCD in the central office as a matter of interpretation of the Merger Conditions. Data Comments at 9. Likewise, DATA's request for "involvement" in determining SBC's network planning and design, *id.* at 22, does not take issue with the principle that plugs/cards may be owned by the incumbent LEC, *see id.* at 4-9.

- **GTC/GAT** indicate that they are not "concerned about the technical merits of" SBC's request regarding ownership of the equipment. GTC/GAT Comments at 2.

- "**MCI WorldCom** does not object in principle to SBC ILECs owning OCDs." MCI WorldCom Comments at 7.

- **MGC** takes no position on SBC's "narrow" request regarding ownership of the plugs/cards and OCDs. MGC Comments at 2.

- **Prism** does not address interpretation of Paragraph 3d at all.

- "**Sprint** does not oppose SBC ILEC ownership of either the combination plugs/cards or optical concentration devices." Sprint Comments at 2.

This is a landslide of support for SBC.

The very limited dissent is paper-thin. ALTS supports ownership of the OCD by incumbent LECs, although it suggests, without any legal explanation, that this should be done by waiver because OCDs are used "solely for the provision of Advanced Services." ALTS Comments at 10. That is incorrect. As the *February 15 Letter* explained and Alcatel confirms, the OCD will be used in the central office to deliver data packets from multiple remote terminals to the appropriate data provider. *February 15 Letter* at 5; Alcatel Comments at 4. This is a traditional "cross-connect function" of an incumbent LEC. Alcatel Comments at 4. Moreover, it does not fall within the scope of "provid[ing] Advanced Services" to customers, which defines

both the eventual responsibility of the separate affiliate (*see* Merger Conditions ¶ 1) and the use of Advanced Services Equipment (*see id.* ¶ 3d). *See also February 15 Letter* at 4.

MCI WorldCom takes exactly the opposite position from ALTS, suggesting that plugs/cards – but not OCDs – are Advanced Services Equipment because they provide the same functionality that could be provided by a DSLAM and supposedly are being installed "only to support Advanced Services." MCI WorldCom Comments at 3. MCI WorldCom is wrong on both counts. As Alcatel explains, DSLAMs are deployed specifically to provide DSL services, while DLC systems such as the one SBC will use are installed to meet "multiple service requirements (i.e. voice and data)." Alcatel Comments at 2. The plugs/cards on order from Alcatel are "integrated piece[s] of technology having both POTS and DSLAM capabilities as well as the 'splitter' functionality." *February 15 Letter* at 4. Moreover, as discussed above, the plugs/cards will be installed to provide SBC POTS as well as SBC Advanced Services, on a physically integrated basis. Even MCI WorldCom notes that some plugs/cards initially may not be used to provide Advanced Services. MCI WorldCom Comments at 3. The plugs/cards thus are not "functionally equivalent" to DSLAMs. *Merger Conditions* ¶ 3d; *February 15 Letter* at 4.

AT&T goes farther than SBC, saying that the plugs/cards and OCDs *must* be owned by the incumbent LEC rather than its Advanced Services affiliate. AT&T Comments at 6-9. Although AT&T's argument supports SBC, the Bureau should understand that it is not an accurate interpretation of the Merger Conditions. The Merger Conditions address the circumstances under which incumbent LECs may and may not own Advanced Services Equipment. They do not prohibit an Advanced Services affiliate from owning equipment that is not Advanced Services Equipment. At their option, either the SBC incumbent LEC, or the Advanced Services affiliate, or both, may own equipment that is not Advanced Services

Equipment. Indeed, the Merger Conditions specifically contemplate possible transfers of non-Advanced Services Equipment from the incumbent LEC to the Advanced Services affiliate; unlike Paragraph 3d's blanket rule for Advanced Services Equipment, the obligations that would travel to the affiliate with such equipment would be evaluated on a case-by-case basis.[4] *See* Merger Conditions ¶ 3 & n.6, ¶ 3e.

There is, then, no serious dispute that the SBC incumbent LECs may own the plugs/cards and/or OCDs at issue here *under the existing language of the Merger Conditions*. That should be the end of the matter, and the Bureau should reach a quick and favorable decision on SBC's request.

II. THE BUREAU SHOULD REJECT EFFORTS TO EXPAND THE SCOPE OF THIS PROCEEDING AND TO ESTABLISH AN UNLAWFUL NEW RULE

Rather than being interested in the interpretive question before the Bureau, the commenters seek to use this proceeding to secure a referendum on incumbent LECs' deployment of DLC equipment. Because SBC alternatively requested a waiver of the Merger Conditions, the theory goes, the Bureau should determine whether to approve SBC's business plan for Project Pronto as part of a public interest inquiry. This entire line of argument should be dismissed with the finding that no waiver is required. Beyond this, however, the CLECs' approach is unlawful, contrary to Commission precedent, and antithetical to competition. Incumbent LECs, just as much as CLECs, have the right to design their own services and to build networks that support those services. The Commission and the courts have repeatedly rejected proposals that would require incumbents to build new networks or support obsolete ones specifically for their competitors. And it would be fundamentally anti-competitive for regulators to give one group of

[4] This rule constitutes the Commission's response to AT&T's argument that any equipment that must be unbundled when owned by the incumbent LEC, must remain with the incumbent LEC.

carriers the power to decide what technologies, and what types of network investments, other carriers may or may not adopt. No carrier would make a $6 billion investment if realizing the benefits of that investment were subject to the blessing and joint planning of competitors.

In any event, the CLECs' core claim that Project Pronto will lessen competition is wrong. Project Pronto was designed as a broad effort to improve service for SBC's entire customer base, but especially residential and small business customers who are not located close to a central office. Contrary to the CLECs' repeated claims, Project Pronto will not prevent any CLEC from offering the data services of its choice through construction of competing facilities or on a UNE basis. Quite the opposite. CLECs will gain the option of providing Advanced Services over the new facilities SBC is investing $6 billion to build. The CLECs' real concern is that they have for the most part developed business models that focus on service to businesses, whereas SBC's network investment is being targeted at service to mass market customers.[5] All that proves is that there is room for competition in the market, not that the CLECs have an entitlement to redirect SBC's investment toward their own business plans.

A. Competitors Have No Entitlement to Restrict SBC's Services or Network Deployment

SBC has made a legitimate business decision as to how to deploy its network. That decision has taken account of all applicable requirements for providing access to SBC's network through interconnection, collocation, unbundling, and resale. Indeed, SBC's DLE-DSL offering goes beyond Commission requirements by giving CLECs access to DLE-DSL even where the CLECs are able to collocate their own DSLAMs in SBC's remote terminals. *See* Third Report

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See AT&T Comments at 8-9.

[5] For example, SBC chose ADSL technology over HDSL2 technology in order to reach the mass consumer market and compete against cable modems.

and Order and Fourth Further Notice of Proposed Rulemaking, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 99-238, at ¶ 314 (rel. Nov. 5, 1999) ("*UNE Remand Order*"). There is no legal or policy basis for requiring SBC to go further by designing its own services to most closely match particular CLECs' business plans.

A bedrock principle of the American economic system is that a group of competitors may not agree among themselves what services they (or their competitors) will or will not offer to consumers. The antitrust laws secure this principle.[6] Yet the data CLECs ask this Commission to violate it, by forcing SBC to grant SBC's direct competitors "involvement in the network planning and design of" SBC's Project Pronto. DATA Comments at 22; *see also* MGC Comments at 3 ("key network design decisions must be made on some collaborative basis"). Indeed, the data CLECs lay out specific proposals for how SBC's $6 billion should and should not be spent, such as MGC's proposals for "extension of fiber all the way to the customer's premises" and "construction of parallel copper loops," MGC Comments at 5, and DATA's proposed requirement that SBC "continu[e] to invest in, maintain, and support . . . all-copper loop infrastructure," DATA Comments at 12. If they are addressed at all in the context of SBC's request for textual interpretation, these CLEC demands must be unequivocally rejected, as similar demands have been in the past.

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[6] *See, e.g., Federal Trade Comm'n v. Indiana Fed'n of Dentists*, 476 U.S. 447, 459 (1986) ("A refusal to compete with respect to . . . services offered to customers, no less than a refusal to compete with respect to the price term of an agreement, impairs the ability of the market to advance social welfare . . . ."); *United States v. American Radiator & Standard Sanitary Corp.*, 433 F.2d 174, 186-87, 207 (3d Cir. 1970) (upholding criminal convictions for agreement to stop production of lower-priced plumbing fixtures), *cert denied*, 401 U.S. 948 (1971).

Companies would not make large investments if competitors could determine how the money will be spent.[7] Recognizing this, the 1996 Act balanced its market-opening measures against incumbent LECs' rights to compete and to earn a fair return. Most importantly, Congress established that while incumbent LECs must provide CLECs interconnection, unbundling, and resale access to the incumbent's network, that obligation applies only to the incumbent's existing facilities and retail services. There is no obligation to provide interconnection that is better than the incumbent LEC has chosen for its own operations; to offer unbundled access "to a yet unbuilt superior [network]" of CLECs' choosing; or to provide wholesale services that are not also provided at retail. *See Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 812-13 (8th Cir. 1997) (striking down "superior quality rules"), *aff'd in part, rev'd in part on other grounds sub nom. AT&T Corp. v. Iowa Utils. Bd.*, 119 S. Ct. 721 (1999); 47 U.S.C. § 251(c)(4)(A).

The Commission recently applied this principle in the Advanced Services context. In its *Line Sharing Order*, the Commission directly rejected the very same arguments being made here, stating that incumbent LECs' obligations toward CLECs do not include refraining from upgrading their plant to new fiber-based systems. The incumbent LEC may construct new facilities or decommission existing ones, or migrate its customers from copper to fiber loops in the course of normal maintenance or network improvement. Third Report and Order, *Deployment of Wireline Servs. Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, FCC 99-355, ¶ 80 (rel. Dec. 9, 1999) ("*Line Sharing Order*"). CLECs may be required to find new unbundled facilities as a result, "or find another alternative to maintain service." *Id.*

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[7] DATA's tortured toll road analogy is fundamentally misguided because it ignores this point. *See* DATA Comments at 3-4. Investors would not build a toll road if third parties had the power

Contrary to DATA's view, neither section 256 nor section 259 of the Act overrides these rules by making the incumbent LEC's network deployment and ability to provide services proper subjects for "a cooperative effort in designing the future." DATA Comments at 19. The purpose of section 256 is to promote network interconnectivity by permitting the Commission to participate in the development of *industry* standards relating to that interconnectivity. Section 256(a) would not permit the Commission or CLECs to dictate business decisions specifically for SBC. Section 259 grants rights only to "qualifying carriers" that offer "telephone exchange service, exchange access, and any other service *that is included in universal service*." 47 U.S.C. § 259(d)(2) (emphasis added). CLECs' DSL services, however, are not included in universal service. *See* Report and Order, *Federal-State Joint Bd. on Universal Serv.*, 12 FCC Rcd 8776, 8807 ¶ 56 (1997).

B. Project Pronto Will Not Prevent Any CLEC from Deploying Advanced Services, but Rather Affords All CLECs an Additional Service Option

The data CLECs claim that if they do not have a say in designing SBC's network and services, they will be prevented from deploying their own chosen retail Advanced Services. This also is incorrect. The architecture chosen by SBC will of course determine the features of SBC's new DLE-DSL wholesale offering, but it will not eliminate any offering that is available to CLECs today. Likewise, SBC has no plans for systematic removal of copper facilities that CLECs may wish to use – although, like any other incumbent LEC, SBC has the right to upgrade its network consistent with legal obligations.

CLECs are well able to build their own networks to provide the Advanced Services they choose, using the technologies they choose. Such construction would bring important additional

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to decide where it would go, how many lanes it would have, who would build it, what vehicles could use the road, and what future construction would be undertaken.

competition to the market.[8] In addition, however, CLECs have a range of alternatives for using SBC's network – and those alternatives will grow with Project Pronto.

With or without Project Pronto, a CLEC would have four options for providing Advanced Services to the typical customer, using SBC's network in whole or in part:

1) The CLEC could resell the retail ADSL services provided to end users by SBC's Advanced Services affiliate;[9]

2) Subject to space availability, the CLEC could collocate its DSLAM at an SBC premises (including an SBC central office or remote terminal) and provide its chosen "flavor" of DSL using an unbundled xDSL-capable loop; or

3) Beginning in June 2000, the CLEC could combine its DSLAM collocated in a central office with the high-frequency portion of an SBC voice loop obtained pursuant to the *Line Sharing Order*; or

4) The CLEC may place its own remote terminal in the public right of way and interconnect at SBC's serving area interface ("SAI").

Project Pronto would not remove any of these options. The number of customers for whom resold ADSL service is available would increase, but otherwise each of these options is unaffected. SBC will continue to make available the same xDSL-capable and line-shared UNE loops at the central office as were available before Project Pronto was deployed. In addition, however, *CLECs will have two new or expanded service options as a result of Project Pronto* (see attachments to *February 15 Letter*):

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[8] *See UNE Remand Order* ¶ 104 ("We believe that it is the development of facilities-based competition that will provide both incumbent and competitive LECs with the incentives to innovate and invest in new technologies. Such innovation and investment will bring greater choices of telecommunication services and lower prices to a greater number of consumers."); *id.* ¶ 316 ("Our decision to decline to unbundle packet switching therefore reflects our concern that we not stifle burgeoning competition in the Advanced Services market. We are mindful that, in such a dynamic and evolving market, regulatory restraint on our part may be the most prudent course of action in order to further the Act's goal of encouraging facilities-based investment and innovation").

[9] Such resale would be pursuant to section 251(b)(1) of the Communications Act, outside the pricing rule of section 252(d)(3).

5) The CLEC may take advantage of space newly made available in the remote terminals added to house SBC's DLE-DSL equipment, to collocate its DSLAM in accordance with the requirements of the *UNE Remand Order* and *Line Sharing Order*;[10]

6) The CLEC may utilize SBC's Project Pronto architecture in exactly the same manner as SBC's own Advanced Services affiliate, by ordering the DLE-DSL offering on the same terms and conditions.

CLECs choosing option five will benefit from Project Pronto because they will be able to access the customer's loop closer to the customer premises, and are unlikely to require loop conditioning to serve the customer. In short, they can serve more customers at lower cost than with central office collocation. CLECs choosing new option 6, the DLE-DSL offering, will have a quick way of providing Advanced Services with a low investment, and with the same range of speeds and service levels that would be available to SBC's separate affiliate for its own retail operations.[11] These options were described at a meeting between SBC and 35 CLECs on March 1, 2000.[12]

These facts disprove a variety of CLEC claims. For the foreseeable future, unbundled copper loops will remain available to CLECs that collocate in the central office.[13] CLECs also

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[10] Where Project Pronto requires construction of new controlled environmental vaults and huts, they will be built with additional space in an effort to accommodate collocation by both affiliated and unaffiliated carriers, in addition to the SBC incumbent LEC. Cabinets are designed by manufacturers to serve a particular number of living units and to house a particular amount of equipment, and typically cannot reasonably be constructed with extra space for CLEC collocation. *See February 15 Letter* at 2; Alcatel Comments at 3.

[11] For example, downstream speeds of up to 8 Mbps in increments of 32 kilobits are possible. Only VDSL, a purely fiber-based technology, would provide higher DSL speeds than will be available through the DLE-DSL offering.

[12] A video tape of the March 1 meeting is being filed in conjunction with this Reply. SBC filed a transcript of the meeting in this docket on March 8.

[13] There are no plans to remove copper facilities from service outside the normal course of business. Like other LECs, however, SBC must retain flexibility to manage all its facilities,

will be able to access copper facilities at the SAI or by collocating in the remote terminal where space is available. Facilities-based data CLECs are not limited to a particular technology or a particular vendor unless they choose to use the new DLE-DSL option in lieu of another option. The technology chosen by SBC for its network upgrade may not be the one every CLEC would have chosen, but that only means that some CLECs are not as well off as they hoped to be from Project Pronto; it does not mean that any are worse off. And, as the holdings of the Eighth Circuit and the Commission confirm, CLECs have no right to dictate their preferred technology to the incumbent.

The same points address CLECs' insistence that they should be able to customize SBC's network by installing their own plugs/cards in SBC's Litespan (or equivalent) equipment. SBC is obligated under the Merger Conditions and the 1996 Act to provide nondiscriminatory access to its existing network and to provide collocation at specific points in the network. SBC is meeting those obligations and will continue to do so. But there is no obligation to allow CLECs to reconfigure shared DLE-DSL equipment in SBC's remote terminals, just as there is no obligation to allow CLECs to alter the software of an unbundled central office switch.[14]

Despite the absence of any legal obligation, however, SBC did review this option, and found it to be unworkable. *See February 15 Letter* at 3. It would threaten to exhaust limited space in cabinets, because a CLEC might use a plug/card and the associated slot (which will be

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including taking them out of service consistent with regulatory requirements. *See UNE Remand Order* ¶ 80.

[14] *See* First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of* 1996, 11 FCC Rcd 15499, 15708, ¶ 415 (1996) ("*Local Competition Order*")(incumbent LEC retains control over operations of the switch); Memorandum Opinion and Order, *Application of BellSouth Corp., BellSouth Telecomm., Inc. and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Servs. in Louisiana*, 13 FCC Rcd 20599, 20727, ¶¶ 217-218 & n.698 (1998) (BOC must provide access to vertical features "loaded in the software of the switch").

capable of providing both POTS and Advanced Services to as many as eight lines, *see* Alcatel Comments at 3) to provide data services to a single customer. In a line sharing environment, the SBC incumbent LEC would, under the CLECs' approach, need to use the CLEC's chosen card to provide its own voice-grade service; this approach was rejected in the *Line Sharing Order* (¶ 76). CLECs and the incumbent LEC also would have to develop joint inventory, ordering, and maintenance and repair procedures, causing what Bell Atlantic and GTE aptly describe as "chaos." Bell Atlantic/GTE Comments at 2-3.

Under this approach, moreover, CLECs would lose the pricing advantages of SBC's bulk purchasing of plugs/cards. They would have to develop their own systems for managing plug/card inventories rather than relying on the electronic ordering capabilities that SBC will offer for new DLE-DSL orders and service reconfigurations. This would impose a particular burden on emerging CLECs. Finally, as discussed in the *February 15 Letter*, CLECs and SBC would face a severe problem of local taxation, as each carrier is taxed on the value of its own plugs/cards.[15]

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[15] In states that require the reporting of personal property by situs, a determination would have to be made regarding the location of the individual plug/card on the lien date. *See, e.g.,* Texas Tax Code §§ 21.02, 22.01 (2000). A plug/card's value may have to be reported to over-lapping jurisdictions such as the county, city, independent school district, junior college district, fire prevention district, road and bridge district, cemetery district, hospital district, or water district. *See, e.g., id.* § 1.04(12). Each tax jurisdiction has different property tax rates, so the calculation of the property tax on the plug/card involves numerous calculations of different tax rates times an assessed value. Just in the five-state service area of Southwestern Bell Telephone Company ("SWBT"), there are over 20,000 different taxing jurisdictions. Not all states are "situs" states for property tax purposes. In these non-situs states there are different requirements as to how the personal property is assessed for property tax purposes. Some states require an apportionment of the assessed value of the property to the different taxing jurisdictions by wire mileage methods. Records have to be maintained as to the number of miles of cable and wire located in the various taxing jurisdictions for use in apportioning the assessed value of the personal property to these jurisdictions. SWBT, for example, accomplishes inventory and tracking of plug-ins through a complex internal data system known as Plug-in Inventory Control System and Detailed Continuing Property Record ("PICS/DCPR").

C. Project Pronto Does Not Discriminate in Favor of SBC's Advanced Services Affiliates

CLECs suggest that this Commission should become involved in a lengthy review of the draft contract language for the DLE-DSL offering, or even an industry-wide proceeding to establish related terms and conditions.[16] *See, e.g.*, ALTS Comments at 4-11; AT&T Comments at 9-18; GTC/GAC Comments. In the *Line Sharing Order*, the Commission stressed that issues of the sort being raised here are appropriate for "section 252 arbitration and negotiation proceedings" in the states, not FCC involvement. *Line Sharing Order* ¶ 80. CLECs such as Sprint agree. Sprint Comments at 2. As Sprint points out, moreover, the draft terms attached to the *February 15 Letter* (at the Bureau's request) were just that – a working draft. These terms have already been modified, and a red-lined version of the most recent working draft is attached (again, at the Bureau's request).[17] SBC is not seeking approval of this language, and there is no concrete dispute ripe for resolution by the FCC or any other mediator or arbitrator. SBC, moreover, remains prepared to address specific questions about DLE-DSL raised by CLECs in this proceeding; it will do so under separate cover.

In their comments on specific draft contract provisions, CLECs gloss over the critical point. Under the "most favored nation" provision of section 252(i) and the nondiscrimination rules of the Merger Conditions, CLECs in each state will have access to exactly the same terms

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[16] AT&T even seeks to use this proceeding to secure new forms of line sharing where the incumbent LEC is not the provider of voice-grade service. AT&T Comments at 11-13. That effort to expand the *Line Sharing Order* is especially out of place given that the Merger Conditions do not impose any long-term line sharing requirements at all. *See Merger Order* ¶ 477 (rejecting CLEC calls for line sharing requirements in Merger Conditions).

[17] AT&T's Comments provided the Commission with a draft of contract terms for implementing line sharing in California in accordance with California Public Utilities Commission requirements. The document submitted by AT&T is unrelated to the DLE-DSL offering. In Connecticut, SNET operates by tariff, which will be consistent with the terms of SBC's standard interconnection agreement.

and conditions as apply to SBC's Advanced Services affiliates once "steady state" is reached under the Merger Conditions. *See* Merger Conditions ¶¶ 3-4. Unless a CLEC exercises its option of negotiating different terms and conditions with the SBC incumbent LEC, the incumbent LEC will offer CLECs and the SBC affiliate in that state the same menu of DLE-DSL speeds and configurations. The SBC affiliate will order using the same electronic (or optional manual) interfaces, processes, and procedures as CLECs use. It will pay the same prices (and transactions with the incumbent LEC will be subject to the accounting safeguards of Paragraph 3 of the Merger Conditions). The Merger Conditions thus will work to ensure that CLECs choosing the DLE-DSL option "receive effective, nondiscriminatory access." *Merger Order* ¶ 363.

ALTS suggests that Project Pronto is being implemented in a way that "substantially reliev[es SBC] of collocation obligations." ALTS Comments at 8. In the same breath, however, ALTS acknowledges SBC's commitment to comply with all collocation obligations. *Id.* ALTS therefore is suggesting that it finds incumbent LECs' collocation obligations insufficient, another issue that is far outside the scope of this matter.

Nor is it a valid objection that the DLE-DSL option – which will be offered even where space is available for collocation – might take the place of collocation in remote terminals for SBC's separate affiliate and other Advanced Services providers. *See* MCI WorldCom Comments at 5. Given the inherently limited space in remote terminals, the offering of an attractive alternative to remote terminal collocation provides a great benefit to CLECs that wish to collocate. Moreover, there is no basis for the suggestion that the Merger Conditions require SBC's Advanced Services affiliates to take some type or amount of collocation. All that is

required is that whatever collocation they take in the steady-state environment must be equally available to all. *See* Merger Conditions ¶ 4a(3).

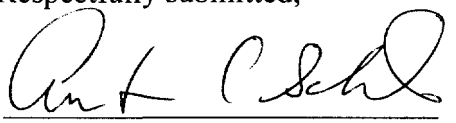
Lastly, commenters suggest that SBC's incumbent LECs may not deploy Project Pronto because SBC's Advanced Services Affiliate is a likely user of the new facilities. *See, e.g.,* DATA Comments at 4, 5. In the first place, Project Pronto was not designed by or for SBC's Advanced Services affiliates. Because it predates the Merger Conditions, the basic design of the project could not be subject to any supposed limitations on interactions between separate Advanced Services affiliates and the SBC incumbent LECs. DATA itself recognizes this history. *See* DATA Comments at 8-9. More fundamentally, this line of argument turns the separate affiliate requirements on their head. The logic of the separation requirement was that CLECs will get more favorable terms if SBC incumbent LECs generally must extend to them the same treatment they afford SBC's own Advanced Services operations. *See Merger Order* ¶ 363 & n.674; *New York Order* ¶ 332 (discussing benefits of structural separation for CLECs and consumers). Within that framework, however, the Commission intended to give SBC the greatest possible flexibility to deploy Advanced Services. *Merger Order* ¶ 456. Paragraph 3 also recognizes the special relationships that properly exist between affiliates in joint marketing and other areas. If SBC's incumbent LECs could not deploy an integrated technology that includes POTS because it will be used as part of SBC's Advanced Services, then CLECs predictably would receive fewer new offerings from SBC incumbent LECs, and consumers would have fewer Advanced Services options.

CONCLUSION

Quick action on SBC's request is needed. SBC is deploying Project Pronto. SBC must meet the deadlines of the *UNE Remand Order* and the *Line Sharing Order* and the Advanced Services requirements of the Merger Conditions. Definition of the terms and conditions for the DLE-DSL offering must be completed before the offering can be made available to CLECs. And, perhaps most importantly, consumers are demanding the services Project Pronto will enable SBC (and interested CLECs) to provide. This matter is easily resolved on the face of the Merger Conditions and the comments filed, without any need to consider the far-reaching, industry issues raised by the CLECs. The Merger Conditions do not purport to interpret the 1996 Act (*see* Preamble & n.2), and this is not an appropriate occasion for the Bureau to undertake an academic investigation of possible future industry rules. Nor, if a waiver were deemed necessary, would the claims raised by CLECs support denial of that alternative request.

The Bureau should confirm that plugs/cards and OCDs may be owned by the SBC incumbent LECs under Paragraph 3d.

Respectfully submitted,



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March 10, 2000

APPENDIX DLE-DSL

(***DRAFT*** CONTRACT LANGUAGE)

APPENDIX DLE-DSL

Digital Loop Electronics (DLE) – Asynchronous Digital Subscriber Line (ADSL)

1.0 INTRODUCTION

1.1. This Appendix sets forth the terms and conditions for providing ~~Asynchronous~~ Digital Subscriber Line ("~~x~~ADSL") service utilizing Digital Loop Carrier ("DLC") equipment deployed in conjunction with the Digital Loop Electronics ("DLE") infrastructure project by the applicable SBC Communications Inc. owned Incumbent Local Exchange Carrier (ILEC) and CLEC.

1.2. SBC Communications Inc. (SBC) means the holding company which owns the following ILECs: Illinois Bell Telephone Company, Indiana Bell Telephone Company Incorporated, Michigan Bell Telephone Company, Nevada Bell Telephone Company, The Ohio Bell Telephone Company, Pacific Bell Telephone Company, The Southern New England Telephone Company, Southwestern Bell Telephone Company and/or Wisconsin Bell, Inc. d/b/a Ameritech Wisconsin.

1.3. As used herein, **SBC-12STATE** means the above listed ILECs doing business in Arkansas, California, Illinois, Indiana, Kansas, Michigan, Missouri, Nevada, Ohio, Oklahoma, Texas and Wisconsin.

1.4. As used herein, **SNET** means the applicable above listed ILEC doing business in Connecticut.

1.5. The prices at which **SBC-12STATE** agrees to provide CLEC with DLE-DSL are contained in the applicable Appendix Pricing and/or applicable Commissioned ordered tariff as specified below.

1.6. For CLECs operating in Connecticut, **SNET**'s unbundled DLE-DSL offering may be found in the Commission ordered Connecticut Access Service Tariff.

1.7. The term ILEC in this Appendix references the SBC ILECs doing business in the regions, as more particularly described below.

2.0 DESCRIPTION OF INFRASTRUCTURE

2.1. The DLE infrastructure is defined by the Broadband Infrastructure project ~~-~~currently being deployed by the SBC ILECs. The Broadband Infrastructure Project will require placement of at least the following components by the SBC ILECs in their respective networks: a Remote Terminal ("RT") equipped with DLC equipment; RT Derived ADSL Capable Loops; Dedicated fiber strands from the remote terminal to the central office for voice and adata Central Office Terminal ("COT"); and access to CLEC Asynchronous Transfer Mode ("ATM") capacity.

2.2. An RT for the purposes of this Appendix can be defined as either a Controlled Environmental Vault ("CEV"), Fiber Hut or Cabinet equipped with DLC equipment. DLC equipment deployed with this infrastructure include the following: Alcatel Litespan 2000 or 2012.

2.3. A Serving Wire Center ("SWC") for the purposes of this Appendix can be defined as an end office.

2.4. RTs (Litespan 2000, 2012~~ and UMC 1000~~) will be installed to effectively shorten copper loops for DSL to less than 12 Kft. The loops from these RTs will be referred to as RT derived DSL capable loops and are defined as the copper facility from the remote terminal, through the Subscriber Access Interface ("SAI") to the end user premise. These loops will consist of feeder cable from the remote terminal to the SAI and distribution cable from the SAI to the end user

premises. The feeder cable is integrated (hard-wired) into the RT DLC equipment. A cross-connect must be made in the SAI to connect the distribution copper to the appropriate feeder copper facility to integrate the end user facility through DLC.

2.5. A combination (voice and data) card will be placed in the RT for use with the Alcatel Litespan 2000 or 2012 DLC system. At this time the only card available with the DLC system is the ADSL Distribution Line Unit (ADLU). The ADLU card is an ADSL service card, providing the same specifications as current ADSL service. This card provides a functionality similar to a DSLAM in that it splits the voice and data signal and generates an ATM packet signal for the data path. At this time, each ADLU card is capable of supporting two DSL end users (dual cards). Next generation cards capable of supporting other xDSL services or additional end users will be considered for this service as they become available from the vendor.

2.6. From the RT, OC-3s will be utilized to transport voice and data from the RT to the Central Office on a non-protected fiber. A distinct OC-3c will be provided for the data portion of path and a distinct OC-3 will be provided for the voice path. In the central office, the incoming data OC-3c be cross connected from the Fiber Distribution Frame ("FDF") to an Optical Concentration Device (OCD). The OCD aggregates many incoming OC-3cs from multiple RTs to a smaller number of outbound OC-3c or DS3 facilities and routes traffic the appropriate CLEC ATM Network.

2.7. Deployment of this infrastructure will occur in multiple, overlapping phases over three (3) years. The SBC ILECs have chosen the Alcatel 2000 DLC system for this deployment. The Litespan 2000 consists of two or more terminals or nodes; a COT; and one or more RTs connected by a single-mode fiber optic span. The current version of Litespan 2000 (Release 8) uses the standard OC-3 transmission rate and provides up to 2016 POTS lines. Litespan 2000 integrates traditional DLC and fiber optic multiplexer functions, eliminating the need for two separate functions when providing services over single-mode optical fibers in the loop feeder network. Litespan 2000 also enables cross-connecting both DS0 channels and DS1 rate signals. Cross connections may be made between COT channel units and RT channel units or between channel units located in the same terminal.

~~A combination (voice and data) card will be placed in the RT for use with the Alcatel DLC system. This card is referred to as the ADSL Distribution Line Unit (ADLU). The ADLU card is an ADSL service card. This card provides the same functionality as a DSLAM in that it splits the voice and data signal. At this time, each ADLU card is capable of supporting two DSL end users (dual cards).~~

3.0 DEFINITION OF UNBUNDLED NETWORK ELEMENTS

3.1. The term DLE describes a specific outside plant network infrastructure that is described in detail above.

3.2. The term ~~A~~xDSL describes various technologies and services. **SBC-12STATE**'s unbundled DLE-DSL offering is set forth below for CLECs to use in conjunction with providing x~~A~~DSL to their end-user over the DLE infrastructure.

~~3.3.~~Any service deployed under the terms of this Agreement must be compatible with the **SBC-12STATE** ILECs DLC equipment deployed in the RT and with any **SBC-12STATE** ILECs equipment deployed in the COT or serving wire center (SWC). The DLC equipment deployed in conjunction with this offering is the Alcatel Litespan 2000 or 2012. At this time only an ADSL Line Unit Card ("ADLU") is available in conjunction with this equipment. CLECs are required to offer a service compatible with the ADLU card specifications available from vendor. ~~SBC -~~

~~**12STATE** shall publish Technical Publications for the purpose of communicating current standards and their application within the Public Switched Telephone Network (PSTN).~~

~~3.4.~~3.3. SBC-12STATE shall publish Technical Publications for the purpose of communicating current standards and their application within the Public Switched Telephone Network (PSTN). As additional technologies are made technically feasible, the SBC ILECs will consider such technologies at that time. A CLEC may place a request for additional technologies to be addressed in this Appendix via the Bonafide Request Process ("BFR") set forth in Appendix UNE to this agreement.

~~3.5.~~3.4. This offering will support the deployment of any DSL equipment which provides for the transmission of ADSL technologies which comply with current national standards (ANSI T1.413-1998).

3.5. Loop qualification will be offered as described in Appendix DSL to this agreement.

~~At this time other DSL technologies will not be offered in conjunction with this offering due to technical limitations with the DLE infrastructure being deployed by the SBC ILECs. As additional technologies are made technically feasible, the SBC ILECs will consider such technologies at that time. A CLEC may place a request for additional technologies to be addressed in this Appendix via the Bonafide Request Process ("BFR") set forth in Appendix UNE to this agreement.~~

~~3.7.~~3.6. The unbundled network elements necessary for a CLEC to provision a DSL service in the DLE environment will be offered in two situations: Line Shared versus Non-Line Shared.

~~3.8.~~The elements described herein are for use in conjunction with the DLE environment only and cannot be used in conjunction with or as a substitution for any other unbundled network elements offered in this Agreement. In addition to this Appendix, CLEC, must have negotiated Appendix DSL to this Agreement to be utilized in conjunction with the elements outlined herein. ~~If CLEC wishes to purchase line shared unbundled network elements as addressed herein, CLEC must also have Appendix HFPL to this agreement for line sharing.~~

4.0 LINE SHARED UNBUNDLED NETWORK ELEMENTS

4.1. The following unbundled network elements will be necessary in order for CLEC to provision a DSL service in the DLE environment under line sharing: a high frequency portion of the sub-loop ("HFPSL") from the RT to the Network Interface Device ("NID") at the customer premise; DLE ADSL feeder from the DLC equipment in the RT terminating in the OCD in the central office; and a port on the OCD.

4.2. Additional cross-connects will be required depending upon the arrangement. A ~~DLE-ADSL~~DLE-xDSL Cross-Connect will be required in the SAI in the field to connect feeder cable from the DLC equipment in the RT to the distribution cable to the individual end user. Also, an OCD cross connect to ~~either~~ Collocation will be necessary in such instance as a CLEC wishes to extend the OCD port termination to CLEC collocation in the serving wire center. Additionally, in such instance as a CLEC wishes to transport the data signal from the OCD port to an adjacent central office a service to service through connect to unbundled dedicated transport will be offered ~~or a CLEC Point of Presence ("POP") will be required~~ to extend the OCD port to the CLEC point of presence in the SWC or Adjacent Central Office using existing unbundled dedicated transport. (NOTE: THIS IS A TENTATIVE OFFERING SUBJECT TO CHANGE IN LIGHT OF THE FACT THAT THE PRODUCT TEAM CANNOT DETERMINE A MEANS OF PROVISIONING A SIMPLE CROSS-CONNECT TO UDT).

4.3. The following is a numerical listing of the UNEs necessary for the provisioning of a line shared DSL service under the DLE infrastructure:

4.3.1. UNE – DLE-xADSL HFPSL
4.3.2. UNE – DLE-xADSL Feeder
~~4.3.3.~~UNE - OCD Port Termination

5.0 NON-LINE SHARED UNBUNDLED NETWORK ELEMENT

5.1. In the non-line shared environment the same set of UNEs as those described above for the line shared environment will be utilized by CLEC with one exception. The UNE DLE-xADSL HFPSL will be substituted with a data only DLE-xADSL Sub-loop. This sub-loop is the entire physical copper loop from the RT to the NID at the customer premise.

6.0 UNE DLE-xDSL HFPSL

6.1. The DLC sub-loop is defined as a transmission path beginning at the cross connect within the RT (RT) and extending to the standard NID or demarcation point at the end user premises. CLEC will own and is responsible for providing the end user splitter at the customer premise.

6.2. CLEC will be required to purchase the HFPSL (unbundled spectrum portion of the sub-loop) in a line shared environment. The unbundled spectrum will be allocated over the DLC sub-loop ~~and cross-connect at~~ to the RT; an ADLU card in the DLC equipment; and OC-3c DLC transport to the central office. The OC-3c will be integrated to the DLC equipment in the RT. In addition to the HFPSL, CLEC must purchase the DLE-~~A~~xDSL Cross Connect in the SAI as described above.

6.3. For purposes of this application, this sub-loop will be a line shared loop only. CLEC will own the HFPSL to provide DSL data services over the shared copper facility. The voice portion of this loop will belong to the appropriate SBC ILEC providing the voice service. This option will not be available to CLEC where the voice service is provided by any party other than the SBC ILEC, including those situations where the voice service is provided by any other carrier on a resale or leased basis (e.g., UNE combinations) from the SBC ILEC.

6.4. The OCD Port Termination and OCD Cross-Connect to collocation or ~~to~~ the optional Service to Service Through Connect to Unbundled Transport to the CLEC POP must be in place prior to CLEC's placing of DLC sub-loop orders.

6.5. The existing loop qualification process as outlined in Appendix DSL will be required in conjunction with the DLC sub-loop. Also, the service performance, maintenance and provisioning and installation intervals for an ADSL capable loop as outlined in Appendix DSL will be applicable in conjunction with this offering.

6.6. A design layout record ("DLR") will not be offered in conjunction with this DLE offering.

7.0 UNE DLE-~~A~~xDSL SUB-LOOP

7.1. When the CLEC desires to provide a dedicated data only facility from the RT to the end user under the DLE infrastructure, CLEC will be required to purchase the DLE-xADSL Sub-Loop. This element is identical to the HFPSL element described above and will be provided under the same terms and conditions as outlined above with the exception that the DLE-xADSL Sub-Loop will consist of the entire sub-loop from the RT to end user NID and not simply the high frequency portion of the sub-loop.

7.2. This element will be provided only in conjunction with the DLE infrastructure for the use with data only sub-loops in the non-line shared environment.

8.0 UNE DLE-xADSL FEEDER

8.1. The UNE DLE-xADSL Feeder element will be necessary to transmit the DSL data side of the loop to the OCD in the central office. This element will be required in addition to the UNE DLE-xDSL HFPSL or UNE DLE-xDSL Sub-Loop.

8.2. This product will consist of a port on the ADLU card in the DLC equipment in the RT; ~~and the~~ and the use of a dedicated fiber from the RT DLC equipment to the SWC FDF and OCD.~~.~~

8.3. The data OC-3c will transport packets of information from the multiple ADLU cards placed in the DLC equipment deployed in the RT. These packets are bursting in nature and are from multiple end users, assigned to multiple CLECs.

8.4. Because of the common nature of this transport a permanent virtual connection (PVC) must be configured over this OC-3c fiber facility to support CLEC's DSL service. The PVC consists of virtual cross-connects or channel connections established at both the DLC equipment in the RT and in the OCD device deployed in the SWC.

8.5. A PVC will be made available to CLEC for the establishment of its DSL service. One PVC per end user will made available to CLEC. Unspecified Bit Rate (UBR) PVCs will be the only type of PVC made available with this offering at this time. The PVC will be established using the process as outlined in the provisioning section of this Appendix.

8.6. The maximum number of PVCs that can be provisioned over the DLE-~~A~~xDSL Feeder is dependant upon the form of OCD Port Termination (as described below) purchased in the central office. At this time, the approximate maximum number of PVCs that can be provisioned over a DS3 OCD port is 1000 and 6000 for an OC-3c port.

8.7. CLEC will be responsible for the monitoring of the OCD port termination to ensure that it the number of established PVCs provisioned through such port do not exceed the limits above. In such instance as CLEC exceeds the thresholds as set forth above, the SBC ILECs reserve the right to notify CLEC and require CLEC to purchase additional ports or capacity where available before adding any additional PVCs to the OCD.

8.8. PVCs are configured in advance by ATM service providers between the DSL customer and a single service provider. Under the terms of this Agreement, CLEC represents the single service provider. CLEC is responsible for providing the information necessary for the SBC ILEC to provision the PVC in the SBC ILEC DLC equipment in the RT and in the OCD in the SWC. This information must be provided by the CLEC to the SBC ILEC pursuant to the Customer Information Form (CIF) process outlined in the CLEC Handbook.

8.9. The SBC ILECs will be responsible for network monitoring of the use of the common OC-3c between the central office and the RT. In the provisioning of the PVC, CLECs will be restricted to upstream and downstream ~~bandwith~~bandwidth, aggregate power and noise setting ~~compatiable~~compatible with the card vintage deployed in the DLC equipment. CLECs will be given the capability to establish these settings via the service Profile as outlined in the provisioning section to this Appendix.

8.10. Initially, the SBC ILECs will not allocate this DLE-xADSL Feeder UNE by bandwidth, but reserve the right to modify this Agreement upon the mutual agreement of both parties in order to do so, dependent upon traffic concerns over the shared OC-3c data facility should the amount of cumulative traffic over this shared facility from all ADSL providers exceed a threshold of 75% of

the maximum capacity of the OC-3c bandwidth available for ADSL traffic. Should the Parties be unable to reach agreement on modified terms and conditions within 60 days of the initial written notice from the SBC ILEC, either Party may request resolution of any remaining issues by any appropriate Commission.

9.0 OCD PORT TERMINATION

9.1. The incoming dedicated OC-3c for data will terminate in the OCD. An OCD will be placed in each SWC where this product is made available. CLEC will be required to purchase a port termination on the OCD. The OCD Port Termination will consist of a DS3 or OC-3c port on the OCD.

9.2. In addition to the OCD Port Termination, CLEC must purchase a physical OCD cross-connect. This cross-connect is a physical appearance on the FDF that will allow for the OCD Port Termination to be extended to CLEC's physical ~~or virtual~~ point of collocation or via a service to service through connect and unbundled dedicated transport configuration to a CLEC POP ~~in an adjacent central office~~. The OCD Cross Connect will be provided at the OC-3c and DS3 level.

The OCD service to service through connect will be designed to take an OCD port at the OC-3c or DS3 speed and through connect that port to existing Unbundled Dedicated Transport or Interoffice Transport established by CLEC prior to placing the OCD port order. The Service to Service Through Connect must be provisioned at the same speed as the OCD port and as such will be limited to the OC-3 and DS3 rates. The unbundled transport element upon which the through connect will terminated must be established and complete prior to placing the order for the through connect. Additionally, the OCD port must be in place prior to this order as well. The service to service through connect must be ordered on a separate ASR from the OCD port order.

10.0 PROVISIONING AND INSTALLATION

10.1. Provisioning and installation of these elements should be considered on two distinct separate paths: CLEC infrastructure orders and end user specific orders. CLEC will be required to build the necessary network infrastructure to support its DSL service in the DLC environment seven (7) days prior to placing end user orders for the UNE DLE-xADSL HFPSL, UNE DLE-xADSL Sub-Loop or UNE DLE-xADSL Feeder elements. The necessary elements for infrastructure are the OCD Port Termination and the associated cross-connect or service to service through connects. The infrastructure can be established via ~~OCD Port Termination will be issued via~~ one (1) Access Service Request (ASR) in such instance as the CLEC is collocated in the serving wire center. A second ASR will be necessary if CLEC desires to purchase the option Service to Service Through Connect. ~~–~~End user specific orders consist of either the DLE-xADSL HFPSL or the DLE-xADSL Sub-Loop and the DLE-xADSL Feeder. These elements will be issued utilizing a Local Service Request (LSR).

10.2. In conjunction with each ASR for an OCD Port Termination, CLEC must also submit a Customer Information Form ("CIF") indicating virtual parameters that must be established in conjunction with the OCD. These parameters include the following: Customer Address (Point of Presence ("POP") Location); Connection Speed (OC3c or DS3); Connection Type (UNI DCE, UNI DTE or NNI); Number of Connections (Limit is 6000 for an OC-3c connection speed and 1000 for a DS3 connection speed; and Virtual Path Indicator ("VPI") and Virtual Channel Indicator ("VCI").

10.3. Prior to submitting end user orders, the CLEC must establish a Profile in the SOLID provisioning interface. The SOLID provisioning interface will allow CLECs access to the Network Management System ("NMS") controlling both the OCD and the DLC equipment in the remote

terminal. CLECs will establish a profile that consists of several distinct combinations of several factors including Upstream and Downstream Bandwidth; Aggregate Power; and Noise. CLECs will be allowed to program into SOLID a profile driven by CLEC AECN that consists of many different combinations of these factors. These factors could be established to mirror the various PSD Mask services offered in conjunction with DSL service today. However, at this time, only combinations compatible with the DLC equipment deployed by the SBC ILECs will be available. Thus, integer values in SOLID will be limited by the capabilities of the DLC equipment.

10.4. On each LSR submitted by CLEC a field will appear in which CLEC can designate the profile offering number of the service they wish to establish for a particular end user. This information will then be automatically stripped from the service order in processing within the SBC ILEC's systems and SOLID will automatically establish the service indicated by such numeric. Profiles must be established in SOLID seven (7) business days to issuing an LSR.

10.5. Additional instructions in relation to SOLID, the CIF form and provisioning flows for this product can be found in the CLEC Handbook.

~~**PRE-QUALIFICATION OF LOOPS**~~

~~Because the elements set forth herein are provided for over the DLE infrastructure, all loops will be less than 17 kft in length. Therefore, the existing DSL pre-qualification process outlined in Appendix DSL of this agreement will not be necessary in conjunction with these elements.~~

11.0 LOOP QUALIFICATION

~~11.1. The existing Loop Qualification as outlined in Appendix DSL will be offered in conjunction with these services. Loop qualification will be used by CLEC to identify loops served out of the DLE infrastructure.~~ qualification will not be required in conjunction with this offering, however, a pre-order loop qualification is recommended. Should CLEC perform a pre-order loop qualification on any DSL capable-loop order and the loop qualification returns that the loop length is to long and the DLE infrastructure is available to provide xDSL service, a remote terminal identification will be indicated on the loop qualification. This will serve as the triggering event to notify CLEC that the DLE infrastructure is available to provide DSL services. In such instance as the CLEC does not perform a pre-order loop qualification, if an order for the DLE-DSL service offering described herein is placed, and such infrastructure is not available for that end users physical copper facility, such order will be rejected by the SBC ILEC.

12.0 LOOP CONDITIONING

12.1. Any loop conditioning as required on the copper portion of the DLE Infrastructure to provide an xDSL service will be provided under the specifications as outlined in Appendix DSL.

~~12.0~~13.0 SPECTRUM MANAGEMENT

~~In order to protect the integrity of the network, CLEC agrees to use the DSL capable loops in a manner consistent with industry standards as referenced in this appendix and in Appendix DSL.~~

~~12.1.~~13.1. Spectrum Management requirements as addressed in Appendix DSL must be adhered to by CLEC in conjunction with this product offering.

~~13.0~~14.0 RATE STRUCTURE

~~13.1.~~14.1. UNE DLE-~~A~~xDSL HFPSL, UNE DLE-x~~A~~DSL SUB-LOOP AND UNE DLE-x~~A~~DSL FEEDER

~~13.1.1.~~14.1.1. CLECs will be charged both a monthly recurring charge and non-recurring initial and additional charge for this element.

~~13.2.~~14.2. OCD PORT TERMINATION

~~13.2.1.~~14.2.1. CLECs will be charged both a monthly recurring charge and non-recurring initial and additional charges for this element. The OCD port termination will be offered at both the DS3 and OC-3 speeds.

~~13.2.2.~~14.2.2. In addition to the OCD Port Termination, the OCD Cross-Connect element will be necessary from the OCD Port Termination to either CLEC collocation or to a ~~CLEC POP in an adjacent central office~~CLEC unbundled dedicated transport via a service to service through connect. CLECs will be charged both a monthly recurring and non-recurring rate for the OCD Cross-Connect and/or a service to service through connect. The cross-connect will be offered at two speeds: OC-3 and DS3.

~~In such instance as CLEC desires to extend the OCD Port Termination to an adjacent central office POP, a per mile charge will apply for the use of SBC ILEC Interoffice Facilities ("IOF").~~

~~13.2.3. All charges described herein are interim subject to true-up should a state Commission approve a different rate than that described in Appendix Pricing UNE.~~

14.3. LOOP CONDITIONING AND QUALIFICATION CHARGES

14.3.1. Charges for loop conditioning and loop qualification will be applied as outlined in Appendix DSL.

~~14.0~~15.0 RESERVATION OF RIGHTS

~~14.1.~~15.1. The parties acknowledge that the terms and conditions for the UNEs set forth above are specific to the DLE infrastructure. Such terms and conditions may not be applied to any other Appendix to this agreement.

~~14.2.~~15.2. The Parties acknowledge and agree that the provision of the UNEs set forth above and the associated rates, terms and conditions set forth in this Appendix are subject to any legal or equitable rights of review and remedies (including agency reconsideration and court review). Any reconsideration, agency order, appeal, court order or opinion, stay, injunction or other action by any state or federal regulatory body or court of competent jurisdiction which stays, modifies, or otherwise affects any of the rates, terms and conditions herein, specifically including those arising with respect to Federal Communications Commission orders (whether from the Memorandum Opinion and Order, and Notice of Proposed Rulemaking, FCC 98-188 (rel. August 7, 1998), in CC Docket No. 98-147, the FCC's First Report and Order and Further Notice of Proposed Rulemaking, FCC 99-48 (rel. March 31, 1999), in CC docket 98-147, the FCC's Third Report and Order and Fourth Further Notice of Proposed Rulemaking in CC Docket No. 96-96 (FCC 99-238) or the FCC's Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98 (rel. December 9, 1999), or any other proceeding, the Parties shall expend diligent efforts to arrive at an agreement on conforming modifications to this

Agreement. If negotiations fail, disputes between the Parties concerning the interpretation of the actions required or the provisions affected shall be handled under the dispute resolution procedures set forth in this Agreement.

~~14.3.~~15.3. SWBT's OR Pacific Bell's OR Nevada Bell's provision of UNEs identified in this Agreement is subject to the provisions of the Federal Act, including but not limited to, Section 251(d). The Parties acknowledge and agree that on November 5, 1999, the FCC issued its Third Report and Order and Fourth Further Notice of Proposed Rulemaking in CC Docket No. 96-96 (FCC 99-238), including the FCC's Supplemental Order issued *In the Matter of the Local Competition Provisions of the Telecommunications Act of 1996*, in CC Docket No. 96-98 (FCC 99-370) (rel. November 24, 1999), ("the UNE Remand Order"), portions of which become effective thirty (30) days following publication of such Order in the Federal Register (February 17, 2000) and other portions of which become effective 120 days following publication of such Order in the Federal Register (May 17, 2000). By entering into this Agreement which makes available certain UNEs, or any Amendment to this Agreement to conform such Agreement to the UNE Remand Order within the time frames specified in such Order, neither Party waives any of its rights to seek legal review or a stay pending appeal of the Order. In addition, both Parties reserve the right to dispute whether any UNEs identified in the Agreement must be provided under Section 251(c)(3) and Section 251(d) of the Act, and under this Agreement. In the event that the FCC, a state regulatory agency or a court of competent jurisdiction, in any proceeding, based upon any action by any telecommunications carrier, finds, rules and/or otherwise orders ("order") that any of the UNEs and/or UNE combinations provided for under this Agreement do not meet the necessary and impair standards set forth in Section 251(d)(2) of the Act, the affected provision will be invalidated, modified or stayed as required to immediately effectuate the subject order upon written request of either Party. In such event, the Parties shall expend diligent efforts to arrive at an agreement on the modifications required to the Agreement to immediately effectuate such order. If negotiations fail, disputes between the Parties concerning the interpretations of the actions required or the provisions affected by such order shall be handled under the Dispute Resolution Procedures set forth in this Agreement. In addition, the Parties agree that in the event the UNE Remand Order is stayed pending appeal, neither Party shall be obligated to implement the terms of such Order until such time as the stay is lifted.

~~15.0~~16.0 APPLICABILITY OF OTHER RATES, TERMS AND CONDITIONS

~~15.1.~~16.1. Every interconnection, service and network element provided hereunder, shall be subject to all rates, terms and conditions contained in this Agreement which are legitimately related to such interconnection, service or network element. Without limiting the general applicability of the foregoing, the following terms and conditions of the General Terms and Conditions are specifically agreed by the Parties to be legitimately related to, and to be applicable to, each interconnection, service and network element provided hereunder: definitions, interpretation, construction and severability; notice of changes; general responsibilities of the Parties; effective date, term and termination; fraud; deposits; billing and payment of charges; non-payment and procedures for disconnection; dispute resolution; audits; disclaimer of representations and warranties; limitation of liability; indemnification; remedies; intellectual property; publicity and use of trademarks or service marks; no license; confidentiality; intervening law; governing law; regulatory approval; changes in End User local exchange service provider selection; compliance and certification; law enforcement; no third party beneficiaries; disclaimer of agency; relationship of the Parties/independent contractor; subcontracting; assignment; responsibility for environmental contamination; force majeure; taxes; non-waiver; network maintenance and management; signaling; transmission of traffic to third parties; customer inquiries; expenses; conflicts of interest; survival; scope of agreement; amendments and modifications; and entire agreement.

Certificate of Service

This is to certify that on March 10, 2000, I provided true and correct copies of the "Reply Comments of SBC Communications Inc. in Support of a Determination that SBC Incumbent LECs May Own Combination Plugs/Cards and Optical Concentration Devices" by first-class mail, postage prepaid, to the following:

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Attachment A

DOCUMENT OFF-LINE

This page has been substituted for one of the following:

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Four copies of two VCR tapes and two copies of one VCR tape.